

STATE OF NEW MEXICO
SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT DEPARTMENT
FIELD OPERATIONS DIVISION,
DRINKING WATER BUREAU

Complainant

No. _____

v.

G & S WATERWORKS, PETER SUOZZI, and
DAN-P-NEL LAND, INC.

WSS # 324-09

Respondent

ADMINISTRATIVE COMPLIANCE ORDER
REQUIRING COMPLIANCE AND
ASSESSING A CIVIL PENALTY FOR
FAILURE TO TAKE CORRECTIVE ACTION
AND ASSESSING A CIVIL PENALTY
FOR ADDITIONAL VIOLATIONS

Pursuant to Section 74-1-10 of the Environmental Improvement Act (EIA), NMSA 1978, Section 74-1-1, et. sec., and Section 20.7.10.300 NMAC of the Drinking Water Regulations (hereinafter referred to as the "Regulations"), the Secretary of the New Mexico Environment Department (NMED), acting through the Director of Field Operations Division of NMED, issues this Administrative Compliance Order (hereinafter referred to as the "Order") to Respondent G & S Water Works, Peter Suozzi, and Dan-P-Nel Land, Inc., (hereinafter referred to collectively as the "Respondent") to enforce the EIA and the Regulations.

FINDINGS OF FACT

1. NMED is an executive agency within the government of the State of New Mexico and is charged with administration and enforcement of the EIA and the Regulations.

COPY

2. Respondent is a private community water system with its mailing address at 11630 East Grampian Place, Tucson, Arizona 85748.

3. Respondent owns and operates a drinking water system (hereinafter referred to as the "System") located in Grant County, New Mexico.

4. The System provides piped drinking water to approximately 67 water users and has 46 service connections. The drinking water is provided year round to the water users.

5. The System is supplied by a ground water source, and water from this source is pumped to the System through one well currently in use and identified as Well # 3.

6. NMED issued Administrative Compliance Order #2004-CO-004 to Respondent on July 1, 2004 in order to compel Respondent to take corrective actions pursuant to a compliance schedule.

7. Respondent received the Administrative Compliance Order #2004-CO-004 by certified mail on July 12, 2004.

8. Respondent did not request a hearing or enter into a settlement conference with NMED and therefore Administrative Compliance Order #2004-CO-004 became a final order thirty days (30) after Respondent's receipt of the Order.

9. Section 20.7.10.100 NMAC, incorporating 40 CFR Part 141.62, requires respondent to deliver to its customers drinking water containing a concentration of fluoride not to exceed the maximum contaminant level ("MCL") of 4.0 mg/L.

10. Respondent complied with the Administrative Compliance Order #2004-CO-004 requirement that Respondent continue to collect and analyze quarterly samples for fluoride at all sampling points utilized by the system to determine annual average concentrations and submit all quarterly sampling analysis to NMED within two (2) weeks after laboratory analysis is available.

11. As a result of the continued monitoring of all sampling points, the System has exceeded the MCL for fluoride of 4.0 mg/L on five occasions since the issuance of Administrative Compliance Order #2004-CO-004: on April 15, 2004 at 4.0 mg/L; on July 15, 2004 at 4.68 mg/L; on October 6, 2004 at 4.61 mg/L; on January 5, 2005 at 4.6 mg/L; and on April 7, 2005 at 4.67 mg/L.

12. Respondent has not complied with the Administrative Compliance Order #2004-CO-004 requirement that public notice be given to all customers every three (3) months so long as fluoride levels at the system continue to exceed the MCL for fluoride.

13. Respondent has not complied with the Administrative Compliance Order #2004-CO-004 requirement to provide a copy of the public notice sent to all members every three (3) months to NMED within ten (10) days of the notification.

14. Respondent has not complied with the Administrative Compliance Order #2004-CO-004 requirement to provide NMED within ninety (90) days of receipt of Administrative Compliance Order #2004-CO-004 a detailed corrective action plan to ensure that the fluoride levels at the System meet the MCL for fluoride and a schedule setting forth dates on which compliance with all parts of Administrative Compliance Order #2004-CO-004 will be achieved.

15. Respondent has not complied with the Administrative Compliance Order #2004-CO-004 requirement that within one (1) year of receipt of the Administrative Compliance Order #2004-CO-004, Respondent shall demonstrate to NMED that sufficient funding and resources needed to complete corrective action and remedial measures were or will be obtained.

CONCLUSIONS OF LAW

16. Paragraphs "1" through "15" are realleged as if fully set forth below.

17. The System is a “public water system” as defined by 20.7.10.7.N NMAC because it provides water to the public for human consumption through pipes or other constructed conveyances and has over fifteen (15) service connections and regularly serves over twenty-five (25) individuals daily at least sixty (60) days out of the year.

18. The System is a “community water system” as defined by 20.7.10.7.B NMAC because it is a public water system with over fifteen (15) service connections used by year-round residents and regularly services over twenty-five (25) year-round residents.

19. Respondent is a “supplier of water” as defined by 20.7.10.7.T NMAC because it is a person who owns or operates a public water system.

20. The System maintains fluoride levels in excess of the MCL for fluoride.

21. Respondent failed to comply with Administrative Compliance Order #2004-CO-004 to provide public notice to all customers every three (3) months so long as fluoride levels at the system continue to exceed the MCL for fluoride by not timely providing this information to the public after the violation on April 7, 2005.

22. Respondent failed to comply with Administrative Compliance Order #2004-CO-004 to provide a copy of the public notice sent to all members every three (3) months to NMED within ten (10) days of the notification by not timely providing this information to NMED after the violation on April 7, 2005.

23. Respondent failed to comply with Administrative Compliance Order #2004-CO-004 to provide NMED within ninety (90) days of receipt of Administrative Compliance Order #2004-CO-004 a detailed corrective action plan to ensure that the fluoride levels at the System meet the MCL for fluoride and a schedule setting forth dates on which compliance with all parts

of Administrative Compliance Order #2004-CO-004 will be achieved by not submitting a plan to NMED.

24. Respondent failed to comply with Administrative Compliance Order #2004-CO-004 to demonstrate to NMED within one (1) year of receipt of the Administrative Compliance Order #2004-CO-004, that sufficient funding and resources needed to complete corrective action and remedial measures were or will be obtained by not demonstrating any funding sources or remedial measures were obtained.

SCHEDULE OF COMPLIANCE

25. Based upon the above Findings of Fact and Conclusions of Law, Respondent is hereby ordered to:

- a. to provide NMED with a copy of the public notices sent to all members within one year of the date of this Order, and to advise NMED of all future public notices sent to all members within ten (10) days of the notification;
- b. to provide NMED with a detailed corrective action plan to ensure that the fluoride levels at the System meet the MCL for fluoride and a schedule setting forth dates on which compliance with all parts of Administrative Compliance Order #2004-CO-004 will be achieved within fifteen (15) days of this Order;
- c. to provide NMED with proof of sufficient funding and resources needed to complete corrective action and remedial measures have been obtained within thirty (30) days of this Order.

CIVIL PENALTY

26. NMSA 1978, § 74-1-10 D(1) of the EIA authorizes the Secretary to assess a civil penalty of up to One Thousand Dollars (\$1,000.00) for each noncompliance with an administrative compliance order.

27. NMED hereby assesses against Respondent a civil penalty of Four Thousand Dollars (\$4,000.00) for the four failures to comply with Administrative Compliance Order #2004-CO-004 set forth herein in Paragraphs 21 through 24.

28. NMSA 1978, § 74-1-10 C., of the EIA authorizes the Secretary to assess a civil penalty for violation of the Regulations that shall not exceed One Thousand Dollars (\$1,000.00) per violation per day.

29. NMED hereby assesses against Respondent a civil penalty of Five Thousand Dollars (\$5,000.00) for the five additional violations wherein the System exceeded the MCL for fluoride of 4.0 mg/L since the issuance of Administrative Compliance Order #2004-CO-004: on April 15, 2004 at 4.0 mg/L; on July 15, 2004 at 4.68 mg/L; on October 6, 2004 at 4.61 mg/L; on January 5, 2005 at 4.6 mg/L; and on April 7, 2005 at 4.67 mg/L.

30. Respondent shall pay the civil penalty of **Nine Thousand Dollars (\$9,000.00)** by certified or cashier's check made payable to the State of New Mexico and mailed or hand-delivered to:

- i. New Mexico Environment Department
- ii. Office of General Counsel
- iii. Attn: Kathryn S. Becker, Esq.
- iv. Post Office Box 26110
- v. 1190 S. St. Francis Drive, Suite N-4063
- vi. Santa Fe, New Mexico 87502-6110
- vii.

NOTICE OF OPPORTUNITY TO ANSWER AND REQUEST A HEARING

31. Pursuant to 74-1-10.E NMSA 1978 and 20.1.5 NMAC (available at www.nmenv.state.nm.us), Respondent has the right to request a hearing. If Respondent (a) contests any material or legal matter upon which this Order is based; (b) contends that Respondent is entitled to prevail as a matter of law; or (c) otherwise contests the appropriateness of this Order, Respondent may mail or deliver within thirty (30) days of receipt of this Order a written Request for Hearing to the following address:

Hearing Clerk
New Mexico Environment Department
P.O. Box 26110
viii. 1190 S. St. Francis Drive, Suite N-4063
Santa Fe, New Mexico 87502-6110

32. The Request for Hearing shall include an Answer. Respondent's Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent should so state, and the Respondent may deny the allegation on that basis. Any allegation of this Order not specifically denied shall be deemed admitted. 20.1.5.200.A(2)(a) NMAC.

33. Respondent's Answer shall also include any affirmative defenses upon which Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived. 20.1.5.200.A(2)(b) NMAC.

34. Respondent's Answer shall be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge believed to be true and

correct. 20.1.5.200.A(2)(c) NMAC. Lastly, Respondent must attach a copy of this Order to the Request for Hearing. 20.1.5.200.A(2)(d) NMAC.

FINALITY OF ORDER

35. Pursuant to 74-1-10.E NMSA 1978, this Order shall become final unless the Respondent files a Request for Hearing with the Hearing Clerk within thirty (30) days of receipt of this Order.

SETTLEMENT CONFERENCE

36. Whether or not a Request for Hearing has been filed, Respondent may confer with NMED concerning settlement of this Order. NMED encourages settlement consistent with the provisions and objective of the EIA and the Regulations. Settlement discussions neither extend the thirty (30) day deadline for filing a request for hearing and answer nor alter the deadlines imposed for compliance with the mandates of this Order. Settlement discussions may be pursued as an alternative to, and simultaneously with, the hearing proceedings. Respondent may appear at the settlement conference alone or accompanied or represented by legal counsel.

37. A Stipulated Order shall finalize any settlement reached by the parties. The Stipulated Order must resolve all issues raised in this Order, shall be final and binding on all parties, and may not be appealed.


38. To explore the possibility of settlement in this matter, contact Retta Prophet, Ph.D., Drinking Water Bureau, New Mexico Environment Department, 525 Camino de los Marquez, Santa Fe, N.M. 87505, (505) 827-1400 x1023.

COMPLIANCE WITH OTHER LAWS

39. Compliance with the requirements of this Order does not relieve Respondent of the obligation to comply with all other applicable laws and regulations.

TERMINATION

40. This Order shall terminate when Respondent certifies that all requirements of this Order have been met, and NMED has approved such certification in writing, or when the Secretary approves a Final Stipulated Order.


Ana Marie Ortiz
Director, Field Operations Division
New Mexico Environment Department

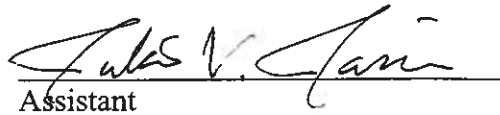
9-16-05
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Administrative Compliance Order Requiring Compliance and Assessing a Civil Penalty For Failure to Take Corrective Action and Assessing a Civil Penalty for Additional Violations was sent via certified return receipt requested mail on the following party of record on September 16, 2005.

G & S Water Works
Attn: Peter Suozzi
11630 East Grampian Place
Tucson, Arizona 85748

Dan-P-Nel Land, Inc.
Attn: Peter Suozzi
11630 East Grampian Place
Tucson, Arizona 85748


Assistant